

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

August 6, 2009

A meeting of the Board of Environmental Protection was held on Thursday, August 6, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, Matt Scott, Frank Woodard, and Nancy Ziegler.

Absent: Elizabeth Ehrenfeld, P. Andrews Nixon, and Lissa Widoff

Staff: Jeff Madore, Bureau of Remediation and Waste Management
George Seel, Bureau of Remediation and Waste Management
Deb Avalone-King, Bureau of Air Quality
Jeff Crawford, Bureau of Air Quality
Dawn Hallowell, Bureau of Land and Water Quality
Marybeth Richardson, Bureau of Land and Water Quality
Beth Callahan, Bureau of Land and Water Quality
Jim Cassida, Bureau of Land and Water Quality
Becky Maddox, Bureau of Land and Water Quality

Others: David P. Littell, Commissioner
Peggy Bensinger, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 3:00 p.m.)

Prior to the start of the regular meeting, the Board conducted a public hearing on each of the following proposed rules:

Chapter 161 Graphic Arts – Offset Lithography and Letterpress Printing / New

Chapter 692 Siting of Oil Storage Facilities / New

Chapter 700 Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water / New

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Atlantic salmon: Commissioner Littell advised that monitoring results show that Atlantic salmon return runs are on the increase this summer.

EMRO: Staff from the DEP Eastern Maine Office developed cylinder containers that can be loaded with various geological environments for the purpose of researching how petroleum products flow in a groundwater system. This effort will help to advance the Department's understanding of how to better clean up spills.

Maine Natural Resource Conservation Program: The Department along with the Nature Conservancy and the U.S. Army Corp. of Engineers have been working to develop the Maine Natural Resource Conservation Program for management of the in lieu fee program. Currently there is approximately 1.7 million dollars available to fund various ecological projects throughout the state. The availability of the program funds for habitat restoration, enhancement and preservation will be announced shortly.

Androscoggin River / Gulf Island Pond: The Department has been modeling for biological oxygen demand (BOD) and nutrient loading in response to issues raised during the Board's hearing on the appeals of the wastewater discharges to the Androscoggin River and water quality certification for Gulf Island Pond. Modeling results indicate that it may be possible to avoid installation of a second oxygen bubbler in Gulf Island Pond if BOD loading from the regulated entities can be lowered.

Mercury: The Office of Management and Budget has approved a U.S. EPA rule to regulate mercury under the Toxics Substances Control Act (TSCA). This action was made in-part because of efforts by states like Maine who have led the effort to regulate and reduce mercury contamination.

Budget: A retirement incentive was included as part of the budget and as a result five DEP staffers have chosen to retire. The budget incentive provision requires that General Fund positions vacated due to retirement must remain vacant for two years. The Department will need to seek waivers from the hiring freeze for positions funded by dedicated revenue. The Commissioner will communicate additional detail on the vacancies at a future meeting.

Salmon Pond: The Department issued a general permit to itself to apply the herbicide 2,4-D to the Eurasian milfoil infestation in Salmon Pond. A letter opposing the general permit was received and this matter may be appealed to the Board.

Toxic Chemicals in Children's Products Law -- Safer Chemicals: The Department released a list of chemicals of high concern (approximately 1,700 chemicals). The chemical listing was well received by other states and feedback indicates that information contained on the web page has been helpful to others.

The next step will be to prioritize these chemicals and identify specific chemicals for further scrutiny and possible regulatory action, including the potential to ban the use of a chemical. The Board would conduct in rulemaking associated with any regulatory action to control the use of specific chemicals.

Federal Climate Change Legislation // Waxman-Markey: Commissioner Littell highlighted the nature of some of Maine's comments on the bill noting that Maine would like to see an increase in the 10% energy efficiency allocation, increases in wildlife habitat and adaptation funding, additional provisions for forestry adaptation and/or subsidies for privately owned forest lands to be managed sustainably. Maine will also comment on the use of bio-mass as a substitute fuel for petroleum and the prohibition on life cycle analysis on bio fuel. Commissioner Littell also commented on electrical transmission issues noting that mid-western and western states tend to favor federal pre-emption of state licensing authority (both energy and environmental), while many eastern states oppose federal pre-emption. Lastly, Maine's comments will include information on the role that off-sets play in the reduction of greenhouse gases.

QUESTIONS

Board member Nancy Ziegler asked if the Department had information on the webpage about the Waxman-Markey bill.

Commissioner Littell explained his involvement with the various groups in support of Maine's efforts and offered that he could provide Board members with information as the issues develop.

Board member Matt Scott asked for additional information on Atlantic salmon in the Penobscot River system if available.

Board member Matt Scott expressed concerns associated with a delay in the application of 2,4-D in Salmon Lake to address the Eurasian milfoil infestation, noting that plant fragmentation could result in the spreading the plant to other lakes in the Belgrade lake system.

Commissioner Littell explained that there may be a delay in 2,4-D application if the permit is appealed. The Department is currently talking with the citizen who has concerns related to the general permit in an effort to address questions/objections. A physical barrier control method was used last year to try to limit the spread of the Eurasian milfoil.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS:

The Board's Executive Analyst provided a brief update on the schedule associated with the HoltraChem proceeding.

- The Chair held a pre-hearing conference with the parties on July 24th. Chair Lessard issued the Fifth Procedural Order which addresses several matters discussed at the conference which and provides an opportunity for the parties to file additional comments on the criteria that will apply to the Board's consideration of this matter.
- Parties have until September 1 for the exchange of documents they have requested of one another and submission of issues and witness lists – followed by another pre-hearing conference on September 11th.
- The tentative schedule calls for filing of pre-filed direct testimony on October 1, and pre-filed rebuttal testimony on November 1st. These submission dates will be finalized at the September conference.

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS: None

III. Regular Agenda

1. MAINE POWER RELIABILITY PROGRAM // Application for 345 kV Transmission Corridor (project briefing possible request for Board jurisdiction)

Department staff provided a project overview which included: a general description of the project, geographic scope, environmental resource impacts, and the proposed compensation plan. Additionally, the Board received all correspondence from the public related to this project which included a request for Board jurisdiction. The request for Board jurisdiction was withdrawn prior to the Board meeting by letter dated August 5, 2009. The Board asked the Department to provide periodic updates (approximately every six weeks) on its review of the application.

2. EVERGREEN WIND POWER III, LLC // ROLLINS WIND PROJECT Department Permit L-24402-24-A-N; L-24402TH-B-N; L24402-IW-C-N (appeal submitted by Friends of Lincoln Lakes)

The Board voted (6-0-0-4) on a motion to deny the appeal submitted by Friends of Lincoln Lakes. The appellants had requested a public hearing and reversal of the Site Location of Development and Natural Resources Protection Act permits approved by the Commissioner for the construction of a 60 megawatt wind energy generation facility to include 40 wind turbines and associated infrastructure located in the towns of Lincoln, Lee, Winn, Burlington and Mattawamkeag. The motion affirms the Commissioner's decision in Department Order L-24402-24-A-N; L-24402-TH-B-N and L-24402-IW-C-N.

The vote was taken pursuant to 38 M.R.S. A. §341-D(4), §344, §481 et seq., and 480-A et seq., 35-A M.R.S. §3401 et seq., and 06-096 CMR Chapters 2 and 375.

Board members M. Wing Goodale, Richard Gould, Sue Lessard, Matt Scott, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, Don Guimond, P. Andrews Nixon, and Lissa Widoff were absent.